



**TOWN OF HARPSWELL
PLANNING BOARD MINUTES
April 16, 2008
APPROVED**

MEMBERS PRESENT

Dorothy Carrier, Chair
Joanne Rogers, Vice Chair
Robin Brooks, Secretary
John Papacosma
Kenneth Cichon
Debora Levensailor, Associate

MEMBERS ABSENT

Carol Tukey, Town Planner
Roberta Floccher, Associate

STAFF PRESENT

William Wells, Code Enforcement Officer
Melissa Swanson, Recording Secretary

The Town of Harpswell Planning Board meeting being duly advertised in the Times Record was called to order at 6:33 PM by Ms. Carrier, Chair. Introductions were made by Board members, and the Pledge of Allegiance was recited. The Chair introduced William Wells, Code Enforcement Officer, who was substituting for Carol Tukey, the Town Planner, who was out sick. Also introduced was the new associate Board member, Debora ("Deb") Levensailor, and the duties of an associate member were explained. The Chair also noted that, with the two associate members, Ms. Floccher and Ms. Levensailor, the Board would be complete for the first time in several years. The Chair read the Agenda, and then explained the hearing process and procedures for Planning Board meetings.

CONSIDERATION OF MINUTES

Ms. Rogers, Vice Chair, moved to accept the Minutes of March 19, 2008 as printed. Mr. Cichon noted a correction to page 3, where the dimensions of the building were wrongly stated. The last line of the first paragraph should state: "The building would be 60 ft. x 120 ft. and would be constructed where they are already storing boats." Mr. Cichon seconded acceptance, with correction. There was unanimous approval to accept the Minutes as corrected.

REVIEW OF SITE VISIT

The Chair stated that she did not attend the site visit. The Vice Chair reported that the site visit was at the Estate of Martha Coles. The Vice Chair attended, along with Board members Mr. Cichon and Mr. Brooks and Ms. Tukey, the Town Planner.

OLD BUSINESS

There was no old business to discuss.

NEW BUSINESS

ITEM 1

08-04-01 Estate of Martha R. Coles (Owner), James R. Coles (Applicant), Subdivision Amendment, Tax Map 7-135, 59 Headland Road, Harpswell.

Reed Coles, as personal representative of his mother's estate, addressed the Board. He explained that the estate owns 5.8 acres at the end of High Head. Under the original subdivision plan, the property was three separate lots. The smallest, where the house is, is one and a half acres, and the other two lots are over two acres. In order to settle the estate, it would be necessary for him to sell two lots. In doing so, the decision was made to redraw the lot lines in order to provide more privacy for the main house. Also, the driveway and the

well house are on the second lot. He had a surveyor draw a plan which created three lots that meet the minimum lot size requirements (a simple amendment to the original plan), and that moved the lot lines slightly north. This was to eliminate the need for an easement for the driveway and the well house. He referred the Board to materials in their packet.

Under the High Head plan, Lots 43, 44 and 45 are the original lot numbers. The High Head Association will retain the three lots, which are also subject to High Head covenants. Mr. Coles said that he was not notified of the Planning Board site visit, but referred the Board to the surveyor's plan which showed the original lot lines and the proposed lot lines, as well as the well house where the electricity comes through which services his house only.

He referred the Board to his narrative in their packet which stated that the lots conform to the Ordinance, and stated that he felt it was a straightforward adjustment of the lot lines.

Mr. Wells asked what the dimensions of the shed were, and how close to the proposed property line, and Mr. Coles stated that the shed was about 6 ft. x 6 ft. and is a few feet away from the proposed lot line.

The Chair asked for comments and questions from the audience.

Charles Carey, who resides at 50 Headland across from the two lots, addressed the Board. He mentioned that he had been to the Town Hall and looked at the documentation concerning the issue and he had "no problem" with moving the lot lines, but mentioned that there has been increasing "wetness" going down the road on both sides over the last several years. He stated that access to the middle of the three lots would go across the wet area and may affect drainage and therefore, the adjoining lot, and wanted a discussion of how access to the middle lot would be provided to a potential buyer.

The Chair asked Mr. Coles to answer, and he stated that there was an existing driveway on Lot 2 on the Plan. There is no driveway on Lot 1, and there are two possible ways to access. He said that any potential buyer would have to decide which way to go. In terms of the wet area, he said that it was well under the buildable area requirements of the Ordinance requirements of 20,000 sq. ft.

Mr. Wells asked if High Head had a road association and if they addressed curb cuts, etc., and Mr. Coles said they did, and explained that it was the corporation that operated the common facilities at High Head.

The Chair closed that section of the meeting, and opened the floor to questions from the Board.

Mr. Cichon wanted clarification of exactly what the Board was doing, reiterating the phrase that it was a "simple adjustment of lot lines". He wanted it confirmed for the record that the plot plan showed the property as a single lot, and that it is not an adjustment of existing lot lines, but a creation of three new lots. He clarified that the issue being dealt with was a single lot.

Mr. Coles stated that he consulted with the Town Planner last summer who told him then that he could redraw the lot lines in any way that seemed most appropriate to him, and did not have to meet the minimum requirements. He did do that, and the lots were marketed that way. When he consulted with the current Town Planner, she said that he had to meet subdivision law. He stated that there was a subdivision approved by the Selectmen in 1965, and to change any lot lines in the subdivision plan would require amending the subdivision from 1965. He was proposing to amend the subdivision plan of 1965 with respect to the three lots.

Mr. Cichon asked if there was ever a time when the lot was three lots that were officially recognized by the Town, and when did that cease to be the case?

Mr. Coles explained that the Town had always taxed it as a single lot, despite the fact that it was a legally approved subdivision.

Mr. Papacosma clarified that there was never anything done in terms of recording the lot that legally made it one lot. In effect, they are recorded as three lots.

Mr. Coles referred the Board to the Deed, and stated that it referred to two separate lots, Lots 44 and 45, and there was never any legal action taken by either the Town or his parents to combine those lots.

Mr. Papacosma clarified that Lot 43 was bought subsequently.

Mr. Brooks read from the introduction to the Subdivision Ordinance, page 4, at the top, which states:

“...a tract or parcel of land means all continuous land in the same ownership, provided that lands located on opposite sides of a road are not considered separate tracts or parcels of land unless the road was established by the owner of the land on both sides of the road...”

He said that, from the literal meaning of the Ordinance wording, it seemed to mean that the issue in question is a subdivision; therefore, would have to go through the process of becoming such by Planning Board approval, etc.

Mr. Coles said that the Town Planner advised him that it is a legal subdivision already, of three lots, as recorded in the Registry of Deeds in Cumberland County. If it is found to be a single lot, his plans could change and he might sell off a lot of whatever size he wanted, as long as it met the minimum required lot size.

Mr. Cichon reiterated that the Town records show it is a single lot; Mr. Coles said the Town’s “tax records” showed it as a single lot, and the Chair stated that the Cumberland County Registry of Deeds shows three lots, and that the applicant wanted only to change the boundary lines.

Mr. Papacosma clarified that what was recorded was the initial two lots bought in 1965, and in 1973, the third lot was purchased. There were two lots, and the addition of the third made it a subdivision.

Mr. Coles said that it was approved as a subdivision in 1965 – the entire 150 lots of High Head.

There was discussion among the Board members regarding the lot(s) ownership, and the lot(s) defined as a subdivision.

Mr. Cichon wanted to know if the original boundary lines were still in effect, or had they been combined at some point in time where they became a single lot. Mr. Papacosma said that there was no change in the recorded deed, per Mr. Coles.

Mr. Cichon questioned the fact that the tax book had it recorded as a single lot because it is three lots, and Mr. Coles referred the Board to the dotted lines on the map (lot lines) which were the Town’s assessing policy, to his knowledge, not a legal recorded change.

Mr. Wells informed the Board that there exists an automatic non-conforming lot merger whereby if these were non-conforming lots, under the same ownership, the assessor's office could automatically merge the lots, but they have to be non-conforming in order to make that lawful, and suggested that it is what happened to the three lots. It seemed to have happened that the assessing office merged the lots because they were under the same ownership.

The Chair clarified that all the lots were non-conforming, and the legal authority would be what is on file at the Cumberland County Registry of Deeds. Mr. Wells said that is what they always "fall back on". He said if it was a lawful conforming lot and conforming in size, then it is an independent lot.

Mr. Papacosma said there was nothing different than the Board has had in the past, just adjusting the lot lines.

Mr. Wells stated that, unless the Coles family executed a deed that combined all the lots, then the lots are still three separate lots.

The Chair asked if there were any more questions, and Mr. Cichon asked about an existing well that was listed on Lot 2, and asked if it was Mr. Coles' intention to use that as a usable well.

Mr. Coles answered that he didn't know, and doubted if it would be used as a supply; he thought someone might build down over the top of the ridge, closer to the water, and that it would be difficult to keep the top of the well from freezing.

Mr. Cichon wanted to know if there would be all new utilities.

Mr. Coles stated that a site evaluator, Steve Robbins, had created designs for each lot, but Mr. Coles didn't submit them for Planning Board approval because the new owner may decide to situate the septic elsewhere on the lot.

The Chair asked about the water supply.

Mr. Coles stated that it was as it was elsewhere in High Head. He said that, on Lot 2, the well didn't have much flow, but had a large storage reservoir, and only ran out when the watering hose wasn't turned off. In their part of High Head, the water was fine and everyone had an adequate flow.

The Chair clarified from Mr. Coles that he had asked for a waiver of §8.3.2 of the Subdivision Ordinance.

Mr. Coles asked for a waiver because he thought the requirements of that Section did not apply.

The Chair said that the Board's questions of whether or not this was an existing subdivision or a new one, were answered, and she was inclined to grant the waiver.

Mr. Papacosma said, on the basis of it being a pre-existing subdivision, and just looking at adjustment of the lot lines, that might be reasonable.

Mr. Cichon said that, from the standpoint of habitat, etc., that it is a substantially developed property - there is a well on the property, a woods road - it is an altered site. He had concerns that it had been done to standards 40 years ago, and would "distrust" any septic design, etc. done at the time. Mr. Coles stated that subdivision law did not exist then. Mr. Cichon said "whatever procedure existed at the time was satisfied."

He said that any current planning board could not go forward without knowing that these two properties would meet current standards. He would be more comfortable if all information generated had been submitted to the Board, in particular, an existing design, a building envelope for the structures, suitable setback to the well, etc.

Mr. Coles stated that the two septic designs are 100 ft. from the shore and meet the sideline setbacks from the property. He did not know that it had been necessary to submit them.

Mr. Papacosma said that any development would have to go through the Codes Office.

Mr. Cichon wanted to be sure they were not creating lots that are unreasonably encumbered by shifting the lot lines, since they were created when there were no significant safeguards and procedures in place.

Mr. Papacosma reiterated that anyone wanting to build on the lots would have to contact the Code Enforcement Office and lay it out in terms of the current ordinances, and Mr. Wells agreed that would be the case. He also said that it was possible to create an unbuildable lot.

The Chair suggested the Board put a condition on approval if Mr. Coles submitted the septic designs.

Mr. Cichon reiterated that there was no record from 40 years ago, and the original application package was not on file.

Mr. Coles said that he had the septic designs done for prospective buyers, to show that there could be a septic system located on that lot.

The Vice Chair asked Mr. Cichon of his other concerns, i.e. septic system, test holes for water, site testing data, and where the house would go in relation to the shore.

The Vice Chair moved that the Board table the application until the next meeting, and they would then expect the plans for the septic systems, some topography of the area, including the building envelope, and some information regarding water supply for the two sites.

Mr. Wells asked if a letter from a well driller would suffice, even though the septic systems had not been permitted.

The Chair said that the Board had accepted letters from well drillers before, and the Vice Chair said that at least there would be recognition that a septic system could be added to the area.

Mr. Coles asked if he adjusted the lot lines on only one lot, would he have to reapply to the Planning Board for approval.

Mr. Papacosma expressed concern that anyone who bought the lot would have to make application.

Discussion of the Board members ensued regarding the fact that the three lots are an approved subdivision.

The Chair clarified that the applicant only wanted to move lot lines, and was not creating anything new.

There was discussion among the Board members whether to request additional information.

The Chair reminded the Board of the motion on the floor for additional information. It had been moved, and seconded.

The Chair asked if there was any further discussion on the motion.

Mr. Brooks asked Mr. Coles if he would object to providing the septic designs.

Mr. Coles stated that he thought it was unfair to expect him to provide additional information which was not required when the original subdivision was approved.

Mr. Brooks said he understood that the property was a single piece of land being divided into three.

The Chair reiterated that the Cumberland County Registry of Deeds had the property recorded as three lots.

Mr. Brooks again referred the Board to the Subdivision Ordinance.

Mr. Papacosma again stated his understanding that there are three lots, two of which are non-conforming, and that Mr. Coles wanted to make the lots conforming to the current Ordinance – just moving lot lines. He said that the issues of septic, water, topography, wildlife, etc. would have to be dealt with by whoever buys the lots. He was of the opinion that it would be fine to treat the issue as the Board has done in the past – come to the Board after the fact.

The Chair reiterated the motion on the floor: to require additional information regarding septic design, well and water quality, and building envelope, and to table the application until the information was provided.

Mr. Cichon said that he looked at the matter as an opportunity for the Board to assess whether or not lot lines were drawn appropriately in the past. It was an old subdivision and there was no supporting information.

Ms. Levensailor asked the Board whether they had required all that information of applicants in the past, and the Chair responded they did not, because the subdivisions were more recent and the information was already provided.

The Chair expressed doubts whether the Board could request the additional information because the property was grandfathered.

The Vice Chair said that the information ought to be provided, and the Chair said that it might be an opportunity for a workshop. There are older subdivisions in town that don't have this kind of information provided.

Mr. Wells understood that the two concerns were septic and water, and asked the Board if they would approve contingent upon Mr. Coles furnishing the information to the Code Enforcement Officer or to the Town Planner.

Mr. Coles said he thought it was unfair to have to provide additional information and said there were other ways of doing it, perhaps asking for the lots to be combined.

The Vice Chair withdrew her motion, and Mr. Brooks withdrew his second.

The Vice Chair made a new motion to grant approval for the application with the understanding that the plans for the septic systems, water and possible building envelopes, be submitted to the Codes Office.

Mr. Coles said he did not understand the water requirement asked for, and the Vice Chair explained that they needed some indication that there was adequate water supply on the two lots.

He explained that everyone on Headland Road had sufficient water supply, and asked if that was sufficient.

The Chair said that it was not, not in the form that the Vice Chair was asking for.

The Chair asked for a second on the motion, and Mr. Brooks seconded, and the Chair asked for any discussion on the motion.

Mr. Cichon stated that, if they were looking at a re-subdivision or subdivision with today's ordinance, they would have those things on the table as a minimum – the setbacks, the building envelopes, the septic system designs. He said that the motion on the table didn't require that the septic system be approved, only that a system could be drawn. He thought the Board should be in a position to make a case by case judgment, especially regarding older subdivisions where there was no record. He supported the motion, as amended.

Mr. Brooks asked how the water requirement would be met, and the Vice Chair said that a letter from a well driller would suffice. The application stated that the lots would be served by existing utilities, but did not indicate that there would be adequate water.

Mr. Cichon said that septic systems exist, and that there is a standard boundary survey that could show the setbacks to the property lines, and that would give the Town the assurances it needed - that moving the lot lines would not compromise the properties. Also, the way it was written, it would allow the applicant approval, and would not preclude the applicant from selling the lots in any way he chose.

Mr. Papacosma reiterated that all the applicant was doing was moving two lot lines to make two lots conforming to current ordinances. All the rest would be dealt with, and he didn't think it was necessary to burden the applicant with all the additional cost at this point. The Chair agreed with Mr. Papacosma.

The Vice Chair said Mr. Coles could do it in another manner if he chose to do so, but would not negate the responsibility of the Board to request the additional information. If it was a new subdivision, it would be required.

Mr. Papacosma stated that the concerns would be met either way; if the lots were sold individually, he would have to go through the Codes Office. If the lots were sold individually with new lot lines, the same thing would happen.

The Chair summarized the motion, that approval would be granted on condition that information be provided on well and water availability, septic designs, and building envelope.

The motion passed three to two. In favor: Robin Brooks, Ken Cichon, and the Vice Chair, Ms. Rogers.
Opposed: The Chair, Ms. Carrier, and Mr. Papacosma.

The items listed above were noted as conditions of approval.

The Board addressed the "Findings of Fact" section of Ms. Tukey's memorandum, and the Chair asked if they should be addressed individually, which the Board agreed upon.

The Vice Chair moved to waiver §8.3.2, Mr. Brooks seconded. The Board voted unanimously to waive the requirements of said Section.

Section 9. Approval Standards

§9.1 Conformance – The Board agreed that the standards of this Section were met.

§9.2 Municipal Services – The Board agreed that the standards of this Section were met.

§9.3 Preservation & Landscape – The Board agreed that the standards of this Section were met.

§9.4 Lots – The Board agreed that the standards of this Section were met.

§9.5 Lands Not Suitable for Development – The Board agreed that the standards of this Section were met.

§9.6 Required Improvements

9.6.1 Lot Markers – They are a standard condition of approval, and would be placed at the time of the lot line change.

9.6.2 Water Supply – The Board had requested that the applicant provide information of adequate water supply. This could be determined during the land use permit phase.

9.6.3 Sewage Disposal – The Board agreed that this could be determined during the land use permit phase.

9.6.4 Fire Protection – Since this was an existing subdivision, the Board agreed that the standards of this Section were met.

The Board agreed that Sections 9.7 through 9.15 of the Subdivision Ordinance were not applicable, since moving lot lines was the only issue.

§9.16 Homeowners/Landowners Association – The Chair clarified with Mr. Coles that there was an association at High Head that addressed maintenance, etc..

The Vice Chair expressed a wish that the language be more specific regarding the phrase “does not apply because it is an existing subdivision”, and wanted to use the language presented by the memo, instead of qualifying the answer with “because they are just moving lot lines”. There was some discussion among the Board members, and it was decided to add “because it is an existing subdivision”.

§10. Performance Guarantee – This Section did not apply.

The Chair read the “Standard Conditions of Approval”, and the Board approved all eight conditions.

The Chair read the “Proposed Additional Conditions of Approval”, which stated that the final plan be amended to include a signature block for the Planning Board to sign and date the plan. There were three more conditions added, which the Vice Chair stated: plans for the septic system, letters regarding availability of water and building envelope.

Mr. Cichon stated that, if the applicant chose to go forward in that way, where the septic designs were not part of the resubdivision plan, they could, perhaps, be an amendment to the plan, but not be incorporated into the actual plan.

The Vice Chair moved to approve the High Head subdivision with an amendment to the plan to include a signature block for the Planning Board signatures and the date of approval. In addition, the conditions of approval, as added, would be followed.

Mr. Cichon seconded the motion, and the Chair asked for any further discussion. There was unanimous approval by the Board.

OTHER BOARD BUSINESS:

The Chair asked Mr. Wells to explain the jurisdictional issue, which was a fish shack used to construct and repair traps, and in great need of repair. The Vice Chair asked for explanation of the specific location, and Mr. Wells stated that it was on Lot 17, by the applicant's house, in Zone CF2, not on the shorefront and not in the first 75 ft. Mr. Wells said the structure was 250 sq. ft. structure that was 16 ft. from the road setback, which would be expanded to 576 sq. ft. and would be 19 ft. from the setback (according to the applicant), and Town records indicated that it may be as much as 22 ft. from the setback. It came before the Planning Board because it was reconstruction of a non-conforming structure.

The Chair asked that the setback was to the greatest practical extent, and Mr. Wells said it was.

The Vice Chair clarified that the applicant was totally rebuilding the structure.

Mr. Wells said that, due to the topography, the applicant could not go any further back, but it was well within the 30% expansion.

The Planning Board agreed to not accept the jurisdictional issue, and that it would remain with the Code Enforcement Office.

The Vice Chair moved to adjourn, and the motion was seconded.

The meeting adjourned at 7:57 PM.

Melissa Swanson
Recording Secretary